



BILLING CODE: 6820-EP

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 22, and 52

[FAC 2020-06; FAR Case 2020-001; Item I; Docket No. FAR-2020-0001; Sequence No. 1]

RIN 9000-AO03

Federal Acquisition Regulation: Revocation of Executive Order on Nondisplacement of Qualified Workers

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to remove the FAR subpart on nondisplacement of qualified workers. This final rule implements an Executive order which revoked the previous Executive order on this topic.

DATES: *Effective:* [Insert date 30 days after date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202-969-7207 or zenaida.delgado@gsa.gov for clarification of content. For

information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2020-06, FAR Case 2020-001.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing a final rule amending the FAR to implement Executive Order (E.O.) 13897 of October 31, 2019, Improving Federal Contractor Operations by Revoking Executive Order 13495 (published in the *Federal Register* on November 5, 2019, at 84 FR 59709). E.O. 13897 revokes E.O. 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts.

E.O. 13495 required service contractors and their subcontractors to offer employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified.

This final rule amends the FAR to delete FAR subpart 22.12 in its entirety as well as the corresponding clause at FAR 52.222-17, Nondisplacement of Qualified Workers. FAR 1.106, 2.101, and clause 52.212-5 are also amended to delete references to the revoked E.O. 13495, FAR subpart 22.12, and FAR 52.222-17. Contracting officers should not take any action on any complaints filed under former FAR subpart 22.12.

The Department of Labor (DOL) rescinded its implementing regulations on January 31, 2020 (85 FR 5567).

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new solicitation provisions or clauses. The FAR rule removes a requirement for service contractors and their subcontractors to offer employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified.

III. Publication of This Final Rule for Public Comment is Not Required by Statute

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at Title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on

contractors or offerors. This final rule is not required to be published for public comment, because it is simply removing a requirement that has become obsolete as a result of an executive action that compelled the Federal Acquisition Regulatory Council to rescind the requirement. See section 2 of E.O. 13897.

IV. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action, and therefore, this rule was not subject to the review of the Office of Information and Regulatory Affairs under section 6(b) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The FAR rule information collection requirements were collected under the approval authority granted to the DOL Wage and Hour Division currently cleared by the Office of Management and Budget (OMB) under 44 U.S.C. 3501, et seq., under OMB control number 1235-0025, Nondisplacement of Qualified Workers Under Service Contracts, Executive Order 13495. The Wage and Hour Division has requested a discontinuation of this collection as a result of E.O. 13897.

List of Subjects in 48 CFR Parts 1, 2, 22, and 52

Government procurement.

William F. Clark,
Director,
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Acquisition Policy,
Office of Acquisition Policy,
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Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106 by removing from the table the entries "22.12" and "52.222-17".

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

3. Amend section 2.101(b) in the definition "United States" by removing paragraph (4) and redesignating paragraphs (5) through (12) as paragraphs (4) through (11).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.12 [Removed and Reserved]

4. Remove and reserve subpart 22.12.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.212-5 by—

a. Revising the date of the clause;

b. Removing paragraph (c)(1) and redesignating paragraphs (c)(2) through (10) as paragraphs (c)(1) through (9); and

c. Removing paragraph (e)(1)(vi) and redesignating paragraphs (e)(1)(vii) through (xxiii) as paragraphs (e)(1)(vi) through (xxii).

The revision reads as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE

ORDERS—COMMERCIAL ITEMS ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS

AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*)

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52.222-17 [Removed and Reserved]

6. Remove and reserve section 52.222-17.

[FR Doc. 2020-07108 Filed: 5/5/2020 8:45 am; Publication Date: 5/6/2020]